

# ENERGY AND MINERAL IMPACT ASSISTANCE

## PROGRAM GUIDELINES

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### STATE OF COLORADO DEPARTMENT OF LOCAL AFFAIRS

*1313 Sherman Street, Room 521 - Denver, Colorado 80203 - 303/866-2156*

Program guidelines and application form are available on the Department of Local Affairs home page at [www.dola.state.co.us/LGS/FA/emia.htm](http://www.dola.state.co.us/LGS/FA/emia.htm)

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## ENERGY AND MINERAL IMPACT ASSISTANCE PROGRAM

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### OVERVIEW

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Colorado experiences the boom and bust cycles of the extraction industries. Energy and mineral production is subject to the fluctuations of an international marketplace. There is little local or state government can do to control the forces of an international economy.

Boom/bust cycles profoundly affect Colorado, particularly in rural and mountain communities near the geological resource deposits. Through most of the state's history until the mid-1970's, few attempts were made to moderate and assist the communities as they grew and declined with the cycles.

In 1977, the Energy and Mineral Impact Assistance program was created by the General Assembly to provide funds and technical assistance to these communities. Funds for the program were drawn from federal mineral lease royalties and the state severance tax. In the 1977 legislation creating the program, the General Assembly found that “when nonrenewable natural resources are removed from the earth, the value of such resources to the state of Colorado is irretrievably lost.” The legislature declared the severance tax is a means for the state “to recapture a portion of the lost wealth” and expressed its intent “a portion be made available to local governments to offset the impact created by nonrenewable resource development.” Both the mineral lease and severance tax statutes governing the Energy and Mineral Impact Assistance Program are broadly constructed, directing funds to areas socially or economically impacted, not necessarily to mitigating direct energy or mineral development impacts. The relative extent of impact from energy and mineral development, including bust conditions is considered. The program maintains flexibility to respond to areas throughout the state.

**Federal Mineral Lease Funds.** Since the 1920s, the federal government has charged royalties on mineral production from federal lands. A portion of the revenues collected have been returned to the states, counties and school districts from which the minerals were withdrawn. In 1977, the General Assembly enacted a new provision establishing 15% of these federal funds be deposited in a Local Government Mineral Impact Fund to be distributed by the Executive Director of the Department of Local Affairs to “state agencies, public schools and political subdivisions of the state” impacted by mineral and energy development “for planning, construction and maintenance of public facilities and for public services.” In 1982, the Legislature called for additional federal mineral lease funds to be deposited in the Local Government Mineral Impact Fund. The statute states “priority shall be given to those public schools and political subdivisions socially or economically impacted by the development, processing or energy conversion of fuels and minerals leased under said federal mineral lands leasing act” (C.R.S. 34-63-102(1)(b)). With these funds being a federal royalty payment, many local governments have determined federal mineral lease funds are exempt from TABOR limitations.

**State Severance Tax.** In 1977, the General Assembly enacted legislation establishing a severance tax on certain minerals and mineral fuels. This legislation included provisions for deposit of a portion of tax revenues into the Local Government Severance Tax Fund, to be distributed by the Executive Director of the Department of Local Affairs. According to the statute, “funds from the Local Government Severance Tax Fund shall be distributed to those political subdivisions socially or economically impacted” by the development, processing, or energy conversion of minerals and mineral fuels subject to severance taxation. Such funds shall be “used for the planning, construction, and maintenance of public facilities and for the provision of public services” (C.R.S. 39-29-101 through 39-29-114).

**Integrated Administration.** For the convenience of local governments and to minimize administrative overhead expenses, operations of the mineral lease and severance tax local government impact assistance programs have been combined into one integrated program, the Energy and Mineral Impact Assistance program. There are three aspects to the overall program:

- < Grants and loans;
- < Direct distributions; and
- < Severance tax credits.

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### ***DISCRETIONARY GRANTS AND LOANS***

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The largest distribution of funds from the Energy and Mineral Impact Assistance Program occurs in the form of discretionary grants and loans.

**Technical Assistance to Prospective Applicants.** Application forms and technical assistance are available from department regional managers in Loveland, Sterling, Pueblo, Monte Vista, Durango, Grand Junction, Frisco and Golden. The application form and program guidelines are also available on the Department of Local Affairs home page, [www.dola.state.co.us/LGS/FA/emia.htm](http://www.dola.state.co.us/LGS/FA/emia.htm).

**Eligible Recipients.** By statute, eligible recipients are “political subdivisions socially or economically impacted by the development, processing or energy conversion of fuels and minerals”. Political subdivisions include municipalities, counties, school districts and most special districts.

State agencies are also eligible recipients (of federal mineral lease funds) provided they have specific spending authority from the General Assembly. (See “State Agency Guidelines” on page 5.)

If eligible local government recipients choose to provide a public service through a non-profit corporation, the local government must assume responsibility for the administration of any funds awarded. The local government will be required to own any real and/or tangible assets acquired with the funds awarded for ten years.

**Eligible Activities.** By statute, eligible activities consist of the “planning, construction and

maintenance of public facilities” and “the provision of public services.” Examples of public facilities include water and sewer infrastructure, town/city halls, county courthouses, community centers, public roads and streets, emergency medical and fire protection facilities and equipment. Examples of public services include community development assistance to local governments, internship programs and community revitalization assistance.

**Types of Financial Assistance Available.** Generally, financial assistance for public facilities and services is provided in the form of a grant. However, the department is authorized to provide assistance in the form of a loan for “domestic wastewater treatment works” and “potable water treatment facilities.” (More information on loans is provided on page 4 under “Water and Sewer Loans.”)

**Application Deadlines.** Applications are accepted continuously and are considered in the course of three regular funding cycles each year. The application deadline for each of the funding cycles is announced through the Colorado Municipal League, Colorado Counties, Inc., and the Special District Association. Application deadlines are also posted on the Department of Local Affairs home page.

**Maximum Grant Amount.** While there is no absolute limit to the amount of funding an applicant may request, \$500,000 is the suggested maximum grant guideline. It is recognized areas of the state with the heaviest energy and mineral production incur unique impacts. In circumstances in which a project presents a compelling need, is critical to addressing significant impacts, represents a unique opportunity for enhanced quality of life, or is of monumental significance in strengthening a community for the future, the maximum grant guideline may be increased. Water and sewer loans will be considered in amounts up to \$1,000,000.

**Project Selection Criteria.** The department and the state advisory committee in reviewing applications and making funding decisions use the following criteria or guidelines:

- a. The range and extent of impacts associated with energy and mineral development, processing or energy conversion affecting the applicant’s jurisdiction, including areas indirectly affected. The program maintains flexibility to respond to areas throughout the state with lesser impacts.
- b. The extent to which the proposed project addresses the existing or projected community impacts.
- c. Availability of alternative funding sources. Applicants will be expected to explore all other sources for which their proposals may be eligible, and specify efforts to receive funding from such sources. For proposals eligible for more than one source, the state advisory committee and the executive director may adjust the priority or level of funding, based on the degree to which the project relates to energy/mineral impacts and the degree of eligibility for other funds.
- d. Amount of local cash and other funds relative to the grant request amount. Larger matching amounts are generally more competitive. Dollar-for-dollar match,

where local circumstances permit, is encouraged.

- e. The level of in-kind contributions committed to the project.
- f. Local priority as designated by jurisdiction or, if provided, by a countywide impact team.
- g. The relationship of the project to identified community goals and/or documented public health and safety issues.
- h. The applicant's fiscal capacity and ability to pay. The state advisory committee is statutorily responsible for reviewing “the extent of local tax resources” and “the extent of local tax effort in solving energy impacts.” (C.R.S. 34-63-102(5)(b)(I))
- i. Consistency with local/regional plans. To the extent possible, the Energy and Mineral Impact Assistance Program will be supportive of locally/regionally-adopted plans governing land use, development, capital improvement, and comprehensive planning. Where applications conflict with such plans, department staff will identify such conflicts during the review process and will work with appropriate parties to resolve such conflicts before a decision on the application is rendered.
- j. The likelihood and urgency of timely implementation of the proposed project.
- k. The overall feasibility of the proposed project.
- l. The extent to which the proposed project may duplicate other efforts or is not coordinated with other related efforts.
- m. The likelihood the project can be completed within the proposed budget.
- n. The management capability of the applicant/implementers.
- o. The consequences of not providing funding.

**Water and Sewer Loans.** Senate Bill 35 (C.R.S. 39-29-110) was passed during the 1985 state legislative session and allows Energy and Mineral Impact funds to be distributed to political subdivisions of the state on a loan or combination loan and grant basis for “domestic wastewater treatment works” and “potable water treatment facilities.” Eligible activities under the loan provisions of the law are limited to “planning, design, construction, erection, building, acquisition, alteration, modernization, reconstruction, improvement, or expansion” of such facilities.

The law further defines “domestic wastewater treatment works” as “a system or facility...for treating, neutralizing, stabilizing, collecting, or disposing of domestic wastewater.” The statute requires the system or facility have a design capacity to receive more than 2,000 gallons of

wastewater per day. Improvements to treatment works can include appurtenances to the system or facility, “such as outfall sewers, pumping stations, collection and interceptor sewers and the equipment related to such appurtenances.”

The statutory definition of “potable water treatment facilities” is “a system or facility...for treating water to be supplied to the public for domestic use.” Improvements to treatment facilities can include “water treatment plants, treated water storage facilities, water mains, distribution lines, pumps and appurtenances.”

Guidelines for funding distribution under the Water and Sewer Loan program are:

- a. By statute, the minimum interest rate is 5 percent. The loan term will generally not exceed 20 years. Payments are scheduled on an annual basis, with a principal and interest payment due September 1.
- b. Loans will be authorized for only those parts of a domestic water or sewer system specified in C.R.S. 39-29-110(1)(b)(II). Raw water storage or transmission to a treatment facility cannot be considered for loans.
- c. Loans generally will be the first option looked at for deferred maintenance and growth-related sewer and water projects.
- d. The staff will identify for the state advisory committee those projects that appear to warrant a loan as a reasonable alternative to providing full funding of a grant application.
- e. Loan participation may be used as a means to increase local match for a project when local cash on hand is minimal.
- f. Debt refinancing is generally not eligible.
- g. Loan authority is not intended to deter communities from using traditional funding sources for projects.
- h. The department will perform a community fiscal analysis to determine loan feasibility. The analysis will include a review of user rates, tap fees, overall community tax burden and fee structures, population statistics, existing debt service, financial statements, fund balances and anticipated capital improvements.

**State Agency Guidelines.** State agencies are eligible to apply for and receive assistance from that portion of the Energy and Mineral Impact Fund derived from Federal Mineral Leasing revenues. Pursuant to C.R.S. 34-63-102(7), state agencies must have legislative spending authority if a grant application is successful. State agency requests are expected to have the support of benefiting local governments and to meet one or more of the following conditions:

- The project is related to addressing the adverse impacts of energy and mineral development at the local, regional or statewide level;

- The state role is coordination of efforts related to the planning or implementation of mitigation activities to relieve the adverse impacts of energy/mineral development;
- Communities have identified the need for state involvement in the solution of local problems that may extend beyond municipal, county or regional jurisdictional boundaries.
- The project must have a direct benefit or service to local governments.

**Local Review.** The Energy and Mineral Impact Assistance Program, by design, places the emphasis for problem identification and response on local government decision-makers. With the number of applications and the amount of funds requested often exceeding the funding capacity of the program, local prioritization is required if a single jurisdiction submits more than one application in the same funding cycle.

In addition, the Energy and Mineral Impact Assistance Program encourages the formation of countywide impact teams to promote shared effort and review among various jurisdictions in dealing with impact problems. While countywide prioritization is not required, the department values multi-agency coordination and will consider comments and/or prioritization from such teams if provided. The Department of Local Affairs staff will, if requested, assist counties and municipalities in establishing an impact team. The department recommends local impact teams include energy/mineral company officials. These officials can best provide information on exploration, development, extraction, and conversion activities that impact or may impact a community and are an excellent source of information and assistance in planning for the mitigation of such impacts.

The department may request state and regional applications to be prioritized with other applications from within a jurisdiction.

**State Staff Review.** Upon receipt of an application, a specific department staff member is assigned to be the primary contact for the review period. This is usually the department's regional manager for the area. Prior to the state Energy and Mineral Impact Assistance Advisory Committee review of the funding request, program staff meet with the applicant, review the application and the project, and prepare a project summary sheet which describes the project, presents a budget and provides an analysis of the project with positive, negative and general comments. Applicants receive a copy of this project summary before the state committee meeting to review funding requests.

**State Advisory Committee Review.** The state Energy and Mineral Impact Assistance Advisory Committee reviews applications in a public meeting. At the state committee's application review meetings, current applicants have the opportunity to present their application, respond to the project summary statements, and answer questions from the committee. Following the presentation, the committee makes its recommendation to the executive director of the department, who makes the final funding decision.

It should be understood the committee is an advisory body. While the executive director gives



committee recommendations careful consideration, the applicant should not assume a grant or loan is awarded or denied solely on the basis of the committee's recommendation.

By statute the committee consists of:

Executive Director, Colorado Department of Local Affairs (Chair)

Colorado Commissioner of Education

Executive Director, Colorado Department of Transportation

Executive Director, Colorado Department of Natural Resources

Five residents of areas impacted by energy conversion or mineral resource development.

The residents of impacted areas are appointed and serve at the pleasure of the Governor for terms not exceeding four years. Members are eligible for reappointment. State department directors serving on the committee may designate agency representatives to act in their place.

**Administrative Review, Supplemental Grants and Out-of-Cycle Requests.** In certain instances, administrative reviews may be carried out in place of the formal advisory committee review. Administrative reviews may be allowed (a) for those projects which continue a project previously reviewed by the committee and where no substantive problems or changes in the project have occurred, or (b) when a delay in a funding decision may cause undue hardship on an applicant, jeopardize leveraging of other funds or otherwise cause an opportunity to be missed. Preliminary design and engineering studies and supplemental requests do not require a formal application; however, a letter detailing the purpose of the request must be submitted.

**Funding Decision.** Following the meeting of the state advisory committee or the administrative review, the executive director advises each applicant of his/her decision to award or deny grant or loan funding via letter, to the chief elected official of the applicant jurisdiction.

Decision letters are usually mailed within fourteen to thirty days after the state advisory committee meeting. A letter from the executive director announcing a decision to provide project funding is not a formal obligation of funds by the State, but rather an offer to enter into a grant contract for the amount and project specified. Conditions, such as formation of a taxing district, increased local financing share or development of necessary plans, may be stated in the letter. Such conditions must be met either prior to or during the time of performance of the project.

**Contracting.** The offer to contract is generally held open for a maximum of twelve months. If the project cannot proceed within that timeframe, the offer to contract lapses.

Following receipt of an award letter, department staff and the recipient jurisdiction negotiate a draft contract. This may be sent to the Attorney General's Office for review and comment. After any necessary revision and approval by all parties, the final contract copies are routed for signature, starting with the grant/loan recipient. The contract is then routed to the executive director of the department. The grantee will receive a copy of the contract when it has been fully executed. The contracting procedure generally takes from ten to thirty days from the time the final contract is sent by the grantee to the department's office in Denver, beginning the state signature process.

LOAN/GRANT RECIPIENTS SHOULD NOT ENCUMBER OR EXPEND ANY GRANT OR LOAN FUNDS BEFORE THEY RECEIVE A FULLY EXECUTED CONTRACT FROM THE DEPARTMENT. Expenses incurred prior to the execution date of a contract are the obligation of the grantee and cannot be reimbursed by the state.

The provisions of the contract generally include the following:

1. Scope of Work. Each contract contains a “Scope of Services,” which describes the project to be performed using Energy/Mineral Impact funds. This narrative explains the project, payment process, performance schedule and other operational details.
2. Monitoring. During the course of the contract, a specific department staff member will periodically review project progress. The assigned staff will be the grantee's primary contact with the department for the duration of the project and will be responsible for review of reports and payment requests as specified in the grant contract. Specific details as to the frequency and form of monitoring will vary depending upon the nature and scope of the project. In some cases, other state agencies will assist the department with technical monitoring of projects.
3. Payment Schedule. Usually a front-end or initial payment is made within ten to thirty days of the execution of a contract. Upon request and receipt of proper documentation and approval of actual expenditures made during the course of a project, interim payments are issued reimbursing the recipient for incurred expenses. The particular payment schedule and required performance review is specified in the contract. The grantee initiates the request by submitting to the assigned state staff monitor documentation of expenditures and a project status report with a description of work completed to date. Upon review/approval of the request, the project monitor requests an interim payment be issued to the grantee. It generally takes ten to thirty days from the time a request for payment is received by staff for a payment to be issued.

The state retains a specified amount of the grant funds until such time as the project is completed and the grantee has fulfilled all obligations under the contract. The retainage is released upon project completion and receipt and approval of the final project report. Grantees should plan on covering the final project costs with local funds pending release of the state retainage.

4. Amending a Contract. In the event revision of an existing contract is necessary, the grantee should immediately contact the specific department staff member responsible for the project. The grantee will be asked to submit a written request justifying an amendment and specifying the desired changes. A staff review of the request will be conducted and the results provided to the executive director for a decision.
5. Closeout. Final reports are due within 90 days of expiration of the contract.

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## ***DIRECT DISTRIBUTIONS***

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By statute, C.R.S. 39-29-110 (1)(c), fifteen percent of the revenues from the Local Government Severance Tax Fund is distributed directly to municipalities and counties based upon the residency of production employees. This distribution is made by August 31st of each year using employee residency reports submitted by severance taxpayers to the Department of Revenue.

In addition, C.R.S. 34-63-102 (3), requires a portion of the funds deposited in the Local Government Mineral Impact Fund be distributed directly back to the counties and municipalities in whose area employees of a mine or related facility from which such money is derived reside. The distribution occurs annually.

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## ***SEVERANCE TAX CREDITS***

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State statute C.R.S. 39-29-107.5 allows for contributions to be made by severance taxpaying corporations for local public facility and service projects to be converted into a severance tax credit on new or increased energy/mineral production. These contributions are intended for use in addressing front-end impacts associated with new or expanding production.

In order to create such a credit, the severance taxpayer and local government form an agreement for the contribution and submit it to the Department of Local Affairs for review by the state Energy and Mineral Impact Advisory Committee and an approval/denial decision by the executive director of the department. The agreement must specify the following six items:

1. The taxpayer from which the contribution is being made and credit claimed.
2. The local jurisdiction to which the contribution is being made.
3. The need for such contribution relative to impacts from a new or expanding mineral operation.
4. The nature of the contribution in the form of a specific description of the quantities, term, and conditions which make up the contribution and procedures for conveyance. This may include cash transfers, properly valued materials and services, and losses from the purchase of public bonds issued by the jurisdictions.
5. The purpose of the contribution in the form of a description of the relationship of the contribution to need and its role in local government planning and mitigation programs.
6. The amount of the contribution as determined by fair market value of the contributed property and/or services at the time of the execution of the agreement.

The criteria for review of agreements by the state advisory committee and executive director are similar to the funding guidelines used for the grant and loan program described above except that there is a greater emphasis on the need for front end financing before the new/expanded ad valorem tax base is established.

Credit agreements must be reviewed and prioritized locally with other credit agreements and grant/loan requests submitted during a grant review cycle. If approved, the contribution agreement is sent to the State Department of Revenue as documentation for future credit claims by the corporation. Municipalities, counties, school districts and other special districts may use such a credit agreement to obtain industry contributions. More complete written information on the severance tax credit is available upon request. Local units of government considering this mechanism are encouraged to contact their Department of Local Affairs' regional manager to discuss procedure and technical requirements.